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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT LARTIQUE,

Defendant and Appellant.

B283485

(Los Angeles County
Super. Ct. No. TA141656)

APPEAL from a judgment of the Superior Court of Los Angeles County, H. Clay Jacke II, Judge. Affirmed as modified.

Roberta Simon, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, and Shawn McGahey Webb and Shezad H. Thakor, Deputy Attorneys General, for Plaintiff and Respondent.

Robert Lartique appeals from his judgment of conviction of one count of possession of a firearm by a felon (Pen. Code, § 29800, subd. (a)(1)). He argues the trial court erred in denying his motion to suppress evidence on the ground that he lacked a legitimate expectation of privacy in the object of the challenged search. He also asserts the trial court erred in calculating his presentence custody credits. We modify the judgment to correct Lartique's custody credits, but otherwise affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

I. The Charges

In a one-count information, the Los Angeles County District Attorney charged Lartique with possession of a firearm by a felon. (Pen. Code,¹ § 29800, subd. (a)(1).) It also was alleged that Lartique had served three prior prison terms within the meaning of section 667.5, subdivision (b). Lartique pleaded not guilty to the charge and denied the special allegation.

II. The Evidence At Trial

On October 29, 2016, Los Angeles Police Officer Manuel Armenta and his partner, Officer Ceballos, were on patrol in the area of South Broadway and 112th Street in Los Angeles. While driving a marked police vehicle, Officer Armenta saw Lartique walking in an alley near an apartment complex. Lartique was holding a dark blue bag in his hand, and was walking toward a red Hyundai. The vehicle was parked illegally in the alleyway. Officer Armenta recognized Lartique as soon as he saw him, and

¹ Unless otherwise stated, all further statutory references are to the Penal Code.

was aware that Lartique was subject to a search condition. After making a U-turn, Officer Armenta drove the police vehicle into the alley, and observed that Lartique was now sitting in the driver's seat of the Hyundai. As Officers Armenta and Ceballos exited their vehicle, Lartique stepped out of the Hyundai, shut the car door, and began to walk toward the apartment complex. He was no longer carrying the blue bag when he exited the car.

Officers Armenta and Ceballos detained Lartique in the alley, and obtained information that he was in fact subject to a search condition based on a prior felony conviction. As Lartique was being detained, a number of people from the nearby apartment complex began to gather around. As a result, Officer Armenta requested additional units to assist him and his partner with their investigation. One of the individuals who came out of the apartment complex was Taneshia Hillman. She identified herself as Lartique's ex-wife, and informed the officers that the Hyundai belonged to her. When asked if Lartique lived with her, Hillman replied that he did not. Lartique also told the officers that Hyundai did not belong to him.

While Officer Ceballos stayed with Lartique, Officer Armenta began to conduct a search of the Hyundai. Officer Armenta observed that the blue bag that he had seen Lartique carrying minutes earlier was on the front passenger seat. Officer Armenta did not open the bag and only did a cursory search of the car because he needed to assist his partner with the growing crowd that had gathered at the scene. Los Angeles Police Officer Joseph Braun took over the search of the Hyundai from Officer Armenta. During his search, Officer Braun also saw a blue bag on the front passenger seat. Upon opening the bag, Officer Braun discovered a loaded nine-millimeter firearm in an interior pocket

of the bag. At trial, the parties stipulated that Lartique had a prior felony conviction that prohibited him from possessing a firearm.

III. Verdict and Sentencing

The jury found Lartique guilty as charged of possession of a firearm by a felon. In a bifurcated proceeding, the trial court found that Lartique had served two prior prison terms pursuant to section 667.5, subdivision (b). The court sentenced Lartique to a total term of five years in state prison and awarded him 208 days of presentence custody credit. Lartique timely appealed.

DISCUSSION

I. Motion to Suppress Evidence of the Firearm

On appeal, Lartique contends that the trial court erred in denying his motion to suppress evidence of the firearm that was seized in the search of his ex-wife's Hyundai. He argues that he had standing to challenge the search because he had a legitimate expectation of privacy in both the car and the bag that was found inside the car. He also argues that the evidence seized in the search of the car should have been suppressed as the fruit of an unlawful detention. Alternatively, Lartique claims that he received ineffective assistance of counsel because his trial counsel failed to adequately raise these arguments before the trial court.

A. Relevant Proceedings

Prior to trial, Lartique filed a motion to suppress evidence pursuant to section 1538.5. In his moving papers, Lartique asserted that the police had searched the car where the gun was found without probable cause or reasonable suspicion after he had indicated that the car did not belong to him. Lartique also

argued that the search was presumptively unlawful because it took place without a warrant, and thus, had to be justified by the prosecution.

The trial court held a hearing on Lartique's motion to suppress. At the start of the hearing, the prosecutor challenged Lartique's standing to contest the legality of the search, stating: "It's my understanding at most [the car] belongs to a friend, and therefore I believe standing needs to be established by the defense." In response, defense counsel argued that the People were taking inconsistent positions by contending, on the one hand, that Lartique had possession of the car for purposes of proving the underlying charge, while claiming, on the other hand, that he did not have possession for purposes of defeating his motion to suppress. The prosecutor countered that that People's case did not rest on Lartique owning the car, and that the car was simply the location where Lartique had placed the bag that held the firearm. Defense counsel acknowledged that standing based on possession of the car "might be problematic," but asserted that Lartique still had standing to challenge the search based on his possession of the bag because he had a reasonable expectation of privacy in the bag's contents.

The trial court noted that the burden was on the defense to present evidence to establish standing. Defense counsel stated that he believed the officers' testimony would provide such evidence because it would show that Lartique was seen walking toward the car with a bag, which was seized from the car a short time later. Defense counsel also argued that leaving an item in a place where one otherwise lacks an expectation of privacy does not forfeit the legitimate expectation of privacy in the item itself. The prosecutor disagreed, and asserted that when someone

places an item in a vehicle where he does not have a reasonable expectation of privacy, he lacks standing to object to the search of both the vehicle and its contents. The prosecutor also noted that there was no evidence before the court to suggest that the car belonged to a friend or other person known to Lartique. Although the court invited defense counsel to present evidence on that point, counsel declined.

The trial court ruled that it was denying the motion to suppress. Addressing defense counsel, the court stated: “So just simply based upon the argument of counsel and no evidence, the court is going to find that . . . your client lacks standing . . . to go forward on the 1538.5. . . . So that will be denied.”

B. Governing Legal Principles

1. Fourth Amendment Right Against Unreasonable Searches and Seizures

“The Fourth Amendment guarantees ‘[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures’ by police officers and other government officials. (U.S. Const., 4th Amend.) The touchstone of Fourth Amendment analysis is whether a person has a constitutionally protected reasonable expectation of privacy, that is, whether he or she has manifested a subjective expectation of privacy in the object of the challenged search that society is willing to recognize as reasonable. [Citations]” (*People v. Robles* (2000) 23 Cal.4th 789, 794-795; accord, *Robey v. Superior Court* (2013) 56 Cal.4th 1218, 1224.) Accordingly, “to claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable; i.e.,

one that has “a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society.” [Citation.]” (*People v. Ayala* (2000) 23 Cal.4th 225, 255.)

“In considering this question, courts look to the totality of the circumstances. Appropriate factors include ““whether the defendant has a [property or] possessory interest in the thing seized or the place searched; whether he has the right to exclude others from that place; whether he has exhibited a subjective expectation that it would remain free from governmental invasion, whether he took normal precautions to maintain his privacy and whether he was legitimately on the premises.”” [Citation.]’ [Citation.]” (*People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 365.) “A defendant has the burden to establish a legitimate expectation of privacy in the place searched. [Citations.]” (*Ibid.*; see *Rakas v. Illinois* (1978) 439 U.S. 128, 131, fn. 1 [“proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure”].)

“In ruling on a motion to suppress, the trial court must find the historical facts, select the rule of law, and apply it to the facts in order to determine whether the law as applied has been violated. [Citation.] We review the court’s resolution of the factual inquiry under the deferential substantial evidence standard. Whether the relevant law applies to the facts is a mixed question of law and fact that is subject to independent review. [Citation.]” (*People v. Thompson* (2010) 49 Cal.4th 79, 111-112; accord, *People v. Casares* (2016) 62 Cal.4th 808, 835.)

2. Sixth Amendment Right to Effective Assistance of Counsel

“A criminal defendant is guaranteed the right to the assistance of counsel by the Sixth Amendment to the United States Constitution and article I, section 15 of the California Constitution.” (*People v. Doolin* (2009) 45 Cal.4th 390, 417.) To prevail on a claim of ineffective assistance of counsel, “the defendant must demonstrate counsel’s inadequacy. To satisfy this burden, the defendant must first show counsel’s performance was deficient, in that it fell below an objective standard of reasonableness under prevailing professional norms. Second, the defendant must show resulting prejudice, i.e., a reasonable probability that, but for counsel’s deficient performance, the outcome of the proceeding would have been different.” (*People v. Mai* (2013) 57 Cal.4th 986, 1009; see *Strickland v. Washington* (1984) 466 U.S. 668, 694.)

On appeal, we “defer to counsel’s reasonable tactical decisions in examining a claim of ineffective assistance of counsel [citation], and there is a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” . . . “Reviewing courts will reverse convictions [on direct appeal] on the ground of inadequate counsel only if the record on appeal affirmatively discloses that counsel had no rational tactical purpose for [his or her] act or omission.” [Citation.]’ [Citation.] If the record on appeal ““sheds no light on why counsel acted or failed to act in the manner challenged[,] . . . unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation,’ the claim on appeal must be rejected,” and the ‘claim of ineffective assistance in such a case is more appropriately decided in a habeas corpus proceeding.’ [Citation.]” (*People v.*

Vines (2011) 51 Cal.4th 830, 876, overruled in part on other grounds in *People v. Hardy* (2018) 5 Cal.5th 56, 104.)

**C. The Trial Court Did Not Err In Denying
Lartique’s Motion to Suppress**

**1. Lartique Cannot Establish That He Had
a Reasonable Expectation of Privacy in
Object of the Challenged Search**

The trial court denied Lartique’s motion to suppress the evidence seized in the search of the Hyundai on the ground that Lartique lacked standing to challenge the search because he did not have a legitimate expectation of privacy in the car or in the bag found inside the car.² On appeal, Lartique contends that the trial court erred in concluding that he lacked a reasonable expectation of privacy because the totality of the evidence supported the inference that the owner of the car, Lartique’s ex-wife, had given him permission to use the car at the time it was searched. Lartique thus claims that he had a possessory interest in both the car and the bag that was sufficient to allow him to contest the legality of the search. This claim lacks merit.

² In *People v. Ayala*, *supra*, 23 Cal.4th 225, the California Supreme Court noted that “the United States Supreme Court has largely abandoned use of the word ‘standing’ in its Fourth Amendment analyses . . . without altering the nature of the inquiry: whether the defendant, rather than someone else, had a reasonable expectation of privacy in the place searched or the items seized.” (*Id.* at p. 254, fn. 3.) The court thus cautioned that, “in the future, to avoid confusion with the federal high court’s terminology, mention of ‘standing’ should be avoided when analyzing a Fourth Amendment claim.” (*Ibid.*)

As discussed, “[c]apacity to claim the protection of the Fourth Amendment depends . . . upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place.’ [Citation.]” (*People v. Casares*, *supra*, 62 Cal.4th at p. 835.) In the context of a search of a vehicle, “[a] legitimate expectation of privacy in a vehicle requires a showing of a property or possessory interest therein.” (*Ibid.*) The California Supreme Court thus has held that “[a] passenger in a vehicle may not challenge the seizure of evidence from the vehicle if the passenger asserts ‘neither a property nor a possessory interest in the automobile nor an interest in the property seized.’ [Citation.]” (*People v. Valdez* (2004) 32 Cal.4th 73, 122.) In contrast, an individual may be able to claim a possessory interest in a vehicle for purposes of contesting the validity of a search if the record shows that he or she borrowed the vehicle with the owner’s permission at the time it was searched. (*People v. Casares*, *supra*, at pp. 835-836; see also *People v. Leonard* (1987) 197 Cal.App.3d 235, 239 “[a] person . . . who has the owner’s permission to use a vehicle and is exercising control over it has a legitimate expectation of privacy in it”].)

In this case, Lartique failed to present any evidence at the suppression hearing to establish that had permission to borrow the Hyundai from its owner or otherwise had a possessory interest in the car. Lartique also failed to present any evidence to show that he maintained any possessory interest in the bag after he left it in plain sight on the front passenger seat of the car. Indeed, the record reflects that defense counsel did not offer any evidence whatsoever at the hearing, and instead, relied solely on the argument that Lartique could assert a reasonable expectation of privacy in the bag found inside the car even if he

lacked such an expectation of privacy in the car itself. When the prosecutor pointed out that there was no evidence before the trial court regarding the identity of the car's owner and his or her possible connection to Lartique, the court invited defense counsel to present evidence on that issue; counsel declined.

Therefore, at the time the trial court denied Lartique's motion to suppress the evidence seized in the search of the car, it did not have any evidence before it which could have supported a conclusion that Lartique had a reasonable expectation of privacy in either the car or the bag found inside the car. While Lartique relies on the subsequent evidence presented at trial to argue that he did have such an expectation of privacy, that evidence was not before the trial court when it ruled on the motion, and thus, it cannot be used on appeal to demonstrate error in the court's ruling. (*People v. Bryant, Smith and Wheeler, supra*, 60 Cal.4th at p. 366 [where no evidence on the subject of defendant's expectation of privacy was admitted at the hearing on a pretrial motion to suppress, defendant's "recitation of . . . subsequent trial testimony regarding his connections to and the search of [the premises] [was] irrelevant" to his claim of error in the denial of the motion].) On this record, the trial court properly denied Lartique's motion to suppress based on his failure to establish that he had a constitutionally protected expectation of privacy.

Alternatively, Lartique argues that his counsel rendered ineffective assistance by failing to present any evidence at the suppression hearing or to argue that Lartique had a reasonable expectation of privacy in the car based on his permission to use it. Lartique also asserts that his counsel compounded this error at trial by failing to renew the motion to suppress after evidence was presented that showed Lartique had a possessory interest in

both the bag and the car. Based on our review of the record, we conclude that Lartique has not demonstrated that he received ineffective assistance of counsel as a result of these alleged deficiencies in his counsel's performance.

Contrary to Lartique's contention, the evidence presented at trial did not support an inference that he had a possessory or property interest in the car. During his detention, Lartique told the officers that the car did not belong to him. Rather, the car belonged to Lartique's ex-wife, Hillman, with whom he did not reside. There was no evidence that Hillman and Lartique jointly owned the car, or that Hillman had given Lartique permission to use the car prior to the search. There was also no evidence that Lartique had a subjective expectation that the car would remain free from governmental intrusion. Lartique exited the vehicle as soon as the officers approached, and left it unlocked and parked illegally in the alley. While Lartique asserts that "[n]othing in the . . . record suggests [he] was not legally present in the car," he does not point to any evidence to affirmatively show that he lawfully possessed the car at the time it was searched. Accordingly, Lartique has not demonstrated that his counsel rendered ineffective assistance in failing to present evidence or argument regarding the expectation of privacy in the car.

The evidence presented at trial also failed to establish that Lartique had a reasonable expectation of privacy in the contents of the bag. Lartique argues that he had such an expectation of privacy because he was in possession of the bag prior to the search, and the firearm was found in an interior pocket of the bag. This court rejected a similar argument, however, in *People v. Root* (1985) 172 Cal.App.3d 774 (*Root*). The defendant in *Root* moved to suppress evidence seized from a bag that he had placed

inside a car. He did not claim an expectation of privacy in the car, but rather asserted he had a proprietary interest in the bag. (*Id.* at p. 778.) In rejecting the defendant's claim, we observed that "property ownership is only one factor to be considered in determining whether an individual's Fourth Amendment rights have been violated; it is not a substitute for a factual finding that the owner of the goods had a legitimate expectation of privacy in the area searched." (*Ibid.*) The record showed that the defendant placed the bag in another man's car, closed the car door, and walked away from the car; the other man then drove the car away. (*Ibid.*) As a result, the defendant "relinquished physical control of the bag to [the driver of the car], a factor inconsistent with [his] continuing expectation of privacy in the bag." (*Ibid.*) We also noted that the bag was "an opaque plastic bag," and that there was nothing in the record to suggest it "was tied, stapled, taped shut or otherwise sealed from outside view." (*Id.* at p. 779.) Given the totality of the record, the defendant failed to prove he had a reasonable expectation of privacy in the bag. (*Ibid.*)

Similarly, in this case, Lartique cannot prove he had a legitimate expectation of privacy in the blue bag that he placed inside the Hyundai. The evidence at trial showed that, as soon as Lartique saw the officers approaching, he exited the car, closed the car door, and began to walk away. The evidence also showed that Lartique left the bag in plain view on the front passenger seat of the car, which was unlocked and illegally parked. In the absence of evidence establishing that Lartique had a possessory interest in the car itself, his act of leaving the bag inside the unlocked car was inconsistent with a continuing expectation of privacy in the contents of the bag. The mere fact that the firearm was found inside an interior pocket of the bag does not compel a

different conclusion. The bag itself was not locked, placed under the seat, “or otherwise sealed from outside view, so as indicate [an] expectation of privacy as to the contents of the bag.” (*Root, supra*, 172 Cal.App.3d at p. 779; see also *People v. Shepherd* (1994) 23 Cal.App.4th 825, 829 [defendant lacked a legitimate expectation of privacy in the contents of a purse that was left on the floorboard of an unlocked stolen vehicle because she “failed to take normal precautions to maintain her privacy interest in the purse”].) As a result, anyone could have accessed the firearm simply by opening the car door and reaching inside the bag. Because Lartique cannot establish that he had a reasonable expectation of privacy in either the car or the bag, he has failed to show that his trial counsel’s performance in presenting this issue to the trial court was constitutionally deficient.

2. Lartique Cannot Demonstrate that His Detention by the Police Was Unlawful

Citing *Brewer v. Superior Court* (2017) 16 Cal.App.5th 1019 (*Brewer*), Lartique also contends that his motion to suppress evidence should have been granted because the seizure of the firearm was the product of an unlawful detention. The Attorney General asserts that Lartique forfeited this issue by failing to raise it in the trial court. We need not decide whether Lartique’s failure to make an unlawful detention argument as part of his motion to suppress forfeited the issue on appeal. Even assuming the issue has not been forfeited, it fails on the merits.

In *Brewer*, the defendant moved to suppress evidence of a firearm that the police found during a search of a car. (*Brewer, supra*, 16 Cal.App.5th at pp. 1021-1022.) He did not claim that he had a legitimate expectation of privacy in the car. Rather, he

contended that he was unlawfully detained by the police, and that the firearm found in the subsequent search of the car should be suppressed as the fruit of the unlawful detention. (*Id.* at p. 1023.) In denying the motion, the trial court noted that it was clear the police had detained the defendant without reasonable suspicion, but nevertheless concluded that the defendant was not entitled to relief because he failed to show he had a reasonable expectation of privacy in the car where the gun was found. (*Id.* at p. 1022.) The court of appeal held that the trial court erred in denying the motion because “a defendant may challenge evidence found in a searched vehicle as the fruit of an unlawful detention, even if the defendant lacked a reasonable expectation of privacy in the searched vehicle.” (*Id.* at p. 1024.)

In this case, Lartique cannot show that the firearm found inside the car was the fruit of an unlawful detention because there is nothing in the record to support a finding that Lartique was unlawfully detained. Rather, the record demonstrates that the police detained Lartique and conducted the search of the car as a condition of his postrelease community supervision (PRCS). One mandatory condition of PRCS is that “[t]he person, and his or her residence and possessions, shall be subject to search at any time of the day or night, with or without a warrant, by an agent of the supervising county agency or by a peace officer.” (§ 3453, subd. (f).) Thus, if a police officer knows that an individual is on PRCS, the officer may lawfully detain that person for the purpose of conducting a search, so long as the detention and the search are not arbitrary, capricious or harassing. (*People v. Douglas* (2015) 240 Cal.App.4th 855, 863-865.) “As in the case of a parole search, an officer’s knowledge that the individual is on PRCS is equivalent to knowledge that he or she is subject to a search

condition.” (*Id.* at p. 865.) In considering the permissible scope of a vehicle search based on an occupant’s parole status, our Supreme Court has held that “the Constitution permits a search of those areas of the passenger compartment where the officer reasonably expects that the parolee could have stowed personal belongings or discarded items when aware of police activity. Additionally, the officer may search personal property located in those areas if the officer reasonably believes that the parolee owns those items or has the ability to exert control over them.” (*People v. Schmitz* (2012) 55 Cal.4th 909, 913.)

Because Lartique was on PRCS at the time of his contact with the police, he was subject to a mandatory search condition. Officer Armenta, who recognized Lartique as soon as he saw him in the alley, testified that he knew Lartique was subject to a search condition, and that he received confirmation of this fact when he and his partner stopped to speak with him. Officer Armenta further testified that, when the officers approached Lartique in the alley, he was exiting the driver’s side of an illegally parked car and was no longer in possession of the bag that he had been carrying moments earlier. Instead, the bag had been placed on the front passenger seat of the car. Based on this record, the detention of Lartique was clearly lawful as a condition of his PRCS. The subsequent search of the car also was lawful because the officers had reason to believe that the bag belonged to Lartique, and that Lartique had left the bag inside the car once he became aware of the presence of the police. Lartique accordingly has failed to show that the evidence of the firearm seized from the car should have been suppressed as the fruit of an unlawful detention. Because the detention and search were permitted as a condition of his PRCS, Lartique also cannot show

that his trial attorney provided ineffective assistance of counsel by failing to raise this argument before the trial court.

II. Presentence Custody Credits

Lartique contends, and the Attorney General concedes, that the trial court erred in its calculation of Lartique's custody credit award. The trial court awarded Lartique 208 days of presentence custody credit, consisting of 180 days of actual custody credit for the time he spent in custody for violating the terms of his PRCS, and 14 days of actual custody credit and 14 days of conduct credit for the time he spent in custody prior to posting bond. The trial court did not award Lartique any conduct credit for his custodial time resulting from his PRCS violation.

This was error. Subject to certain exceptions not applicable here, section 4019 authorizes conduct credit when a prisoner is confined in a county or city jail "as part of custodial sanction imposed following a violation of postrelease community supervision or parole." (§ 4019, subd. (a)(5).) Lartique thus was entitled to an additional 180 days of conduct credit for the time he spent in custody as a result of violating the terms of his PRCS. The abstract of judgment must be modified accordingly.

DISPOSITION

The judgment is modified to award Lartique a total of 388 days of presentence custody credit, consisting of 194 days of actual custody credit and 194 days of conduct credit. As modified, the judgment is affirmed. The superior court is directed to prepare an amended abstract of judgment, and to forward a certified copy to the Department of Corrections and Rehabilitation.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.